

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

|                                    |   |                                  |
|------------------------------------|---|----------------------------------|
| <b>BENJAMIN RICHARD GEER, JR.,</b> | ) |                                  |
| <b>Petitioner,</b>                 | ) |                                  |
|                                    | ) |                                  |
| <b>vs.</b>                         | ) | <b>C.A. No. 06-38 Erie</b>       |
|                                    | ) | <b>District Judge McLaughlin</b> |
| <b>SUPERINTENDENT JOSEPH NISH,</b> | ) | <b>Magistrate Judge Baxter</b>   |
| <b>Respondent.</b>                 | ) |                                  |

**MEMORANDUM ORDER**

During a telephonic hearing on Petitioner's motion to subpoena documents [Document # 14] held before Magistrate Judge Baxter on August 25, 2006, Petitioner acknowledged that he had not exhausted his state court remedies regarding the claims set forth in his pending *habeas* petition. Magistrate Judge Baxter recommended on the record that this case be closed administratively, without prejudice, to allow Petitioner to fully exhaust his state court remedies.

AND NOW, this 13<sup>th</sup> day of September, 2006;

IT IS HEREBY ORDERED that the foregoing recommendation by Magistrate Judge Baxter be adopted as the opinion of this Court, and that this case be closed administratively, without prejudice to Petitioner's right to re-open this case in the event he is successful in fully exhausting his state court remedies.

s/ Sean J. McLaughlin  
United States District Judge

cc: The Honorable Susan Paradise Baxter  
United States Magistrate Judge